

VICTOR HERNANDEZ K-31659
Pleasant Valley State Prison
P.O. Box 8504 Fac D-3-128-L
Coalinga Ca 93210

FILED

FEB 27 2008

RICHARD W. WICKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JF
(PR)

CV 08 1154

VICTOR HERNANDEZ) PETITIONER'S MOTION FOR
PETITIONER,) EVIDENTIARY HEARING
)
V.)
JAMES YATES WARDEN P.V.S.P.)

Petitioner Victor Hernandez moves this court for leave to conduct an evidentiary hearing. The reason for the hearing is the major substance of the proceedings before this court.

BRIEF OUTLINE OF CENTRAL ISSUE

The central cause before this court is the fact that the trial court induced a plea agreement based on the courts idea that the California Three Strikes law allowed defendants convicted the right to earn five years off a twenty five year to life sentence for good time credits. The California Courts ruled in 1996 that the court did not have the authority to promise good time credits and once a sentence was imposed only the Parole Board had the authority to determine how much time a defendant would serve.

The State put out a written notice to all inmates which had advised that the court did not have the authority to make deals which promised good time credits. The petitioner could not read or write and sat in prison thinking he only had to work and would earn good time credits for his good conduct.

1 On a date to be determined by the record before the court
2 the petitioner after serving 11 years wrote the prison records
3 office to determine what his parole date was. A copy of the return
4 from the records office is attached to the habeas petition which
5 in effect told petitioner that it was the duty of the sentencing
6 court to inform him of the change in the law and conditions of
7 the breached plea bargain.

8 The petitioner petitioned the court in a habeas petition
9 and requested relief from the illegal sentence. The Court produced
10 a habeas petition alleged to have been submitted by the petitioner
11 and then ruled that because petitioner filed this alleged habeas
12 and did not mention the sentencing claim in that petition that he
13 could not file a second petition. In order relief was denied
14 soley because of the production of an alleged habeas petition that
15 petitioner thinks is the product of the District Attorney's
16 Office he was never allowed a evidentiary hearing that would have
17 resolved the source of the habeas petition in State Court.

WHY THIS COURT SHOULD GRANT A HEARING

19 The petitioner urges that it is a very simple matter to
20 inspect a copy of the petition and it will be determined that
21 who ever submitted it did not sign it. That the hand writing is
22 not the petitioner's. In addition the petitioner was not even in
23 the prison it is alleged to have been sent from at the time it
24 was submitted.

25 If counsel were appointed and a evidentiary hearing was
26 conducted it would determine illegal conduct by someone with the
27 intent to obstruct Justice..

CONCLUSION

2 The petitioner would urge this court to grant the appointment
3 of counsel and leave to conduct a evidentiary hearing.

DECLARATION BY PETITIONER

5 I Victor Hernandez declare under the penalty of perjury that I
6 did not file the petition alleged to have been filed by me in the
7 Superior court outlined by the trial court in the slip opinion
8 by the Santa Clara Superior Court. I had no knowledge that the
9 habeas petition was filed nor did I give anyone the authority to
10 submit a document I did not sign. I was not at the prison during
11 the date the alleged habeas was filed.

12 I declare under the penalty of perjury that the information
13 I have provided is true and correct.

Victor Hernandez

Petitioner In Pro Per with assistance of someone to read this.

Victor Hernandez